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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2022-

AUTHORIZING THE EXECUTIVE DIRECTOR OR DESIGNEE TO APPLY FOR, ACCEPT, AND/OR AMEND A FEDERAL SEWER OVERFLOW AND STORM WATER REUSE MUNICIPAL GRANTS (OSG) PROGRAM GRANT, AUTHORIZING THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE (DFA) TO NEGOTIATE, EXECUTE, AND/OR AMEND OSG PROGRAM FUNDING AGREEMENTS, AND AUTHORIZING THE DEPUTY DIRECTOR OF DFA TO PROVIDE PRINCIPAL FORGIVENESS AND PLANNING GRANTS TO DISADVANTAGED AND RURAL COMMUNITIES

WHEREAS:

1. On October 23, 2018, the America's Water Infrastructure Act (AWIA) of 2018 was signed into law and amended section 221 of the Federal Water Pollution Control Act (also known as the federal Clean Water Act), which authorized the Sewer Overflow and Stormwater Reuse Municipal Grants (OSG) program;
2. With grant funding from the United States Environmental Protection Agency (U.S. EPA) for the OSG program, states can fund infrastructure needed to address combined sewer overflows (CSO), sanitary sewer overflows (SSO), and stormwater management;
3. In March 2021, U.S. EPA released its OSG Grant Implementation Document, which describes how U.S. EPA will administer the OSG funds and provide procedures for program implementation for relevant state agencies to issue sub-awards to eligible recipients;
4. On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) of 2021 was signed into law and amended, among other statutes, section 221 of the federal Clean Water Act. The IIJA, among other things, amended the allocation of funds to rural and financially distressed communities under the OSG program;
5. Under section 221, states are required to prioritize funding projects for
(a) communities that are rural (a city, town, or unincorporated area that has a population of not more than 10,000 inhabitants) and financially distressed;
(b) applicants that have begun implementing a long-term municipal CSO or SSO control plan and have implemented or are complying with an implementation schedule for the minimum controls specified in the CSO control policy referred to in Title 33 United States Code (U.S.C.) section 1342(g)(1); or (c) projects that have requested funding through the Clean Water State Revolving Fund (CWSRF);

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6. Under section 221(c)(1) of the Clean Water Act, the term “financially distressed community” means a community that meets affordability criteria established by the state in which the community is located if such criteria are developed after public review and comment. Accordingly, “financially distressed community” means disadvantaged communities (DACs) and severely disadvantaged communities (SDACs) as those terms are defined in the CWSRF Intended Use Plan (IUP);
7. The U.S. EPA has indicated that the federal fiscal years (FY) 2020, 2021, and 2022 OSG grant for California will not exceed \$12,000,000;
8. The OSG grant application requires a minimum non-federal cost share (state match) of twenty percent (20%) of the total grant award. The state match obligation may be passed through to eligible entities which do not serve rural and financially distressed communities. Section 221 of the federal Clean Water Act allows for CWSRF loans (including additional subsidization) for non-equivalency projects to be used to meet the cost share requirement;
9. The OSG grant funds will be administered in accordance with section 221 of the federal Clean Water Act, as amended by the IIJA, and consistent with the U.S. EPA OSG Grant Implementation Document;
10. The state fiscal year 2021/22 CWSRF IUP indicated that projects that applied for but were not funded as part of the SWGP might be funded with OSG funds;
11. The Division of Financial Assistance (DFA) notified the 43 applicants with proposals (totaling nearly \$190 million) that were unfunded by the most recent SWGP solicitation that they may be eligible and may be funded with OSG funds if they become available and if they could ensure that all applicable OSG requirements would be satisfied;
12. Of the 43 applicants that did not receive SWGP funding and that were notified about the potential for OSG funding, five of them expressed interest in the OSG program;
13. Under the OSG program, the state match requirements cannot be passed on to rural and financially distressed communities;
14. The OSG program restricts the use of federal funds as state match and allows state funds to be used towards state match;
15. The OSG program requires a minimum of twenty five percent (25%) of grant funds to be allocated to financially distressed communities and at least sixty percent (60%) of the twenty-five percent to be allocated to rural communities;

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16. The OSG program requires environmental review under the National Environmental Policy Act (NEPA). This environmental review poses a potential financial hardship on applicants serving DACs or SDACs, and these communities do not have financial capability to produce the necessary environmental documents and/or applicable permits to meet funding requirements;

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Executive Director or designee to apply for, accept, and/or amend as necessary the federal OSG program grant in the approximate amount of \$12,000,000;
2. Authorizes the Deputy Director of DFA to negotiate, execute, and/or amend OSG program grant agreements with eligible entities for eligible projects as defined in the federal Clean Water Act, pursuant to the following:
 - a. Establish a deadline for the five entities to submit full proposals for evaluation and award of OSG funds.
 - b. If acceptable and eligible proposals from eligible entities exceed the available OSG funds, awards will be prioritized based on the following affordability criteria: (1) a city, town, or unincorporated area that has a population of not more than 10,000 inhabitants and a median household income (MHI) less than 60% of the statewide MHI; (2) a city, town, or unincorporated area that has a population of not more than 10,000 inhabitants and an MHI less than 80% of the statewide MHI; and (3) all other applicants.
 - c. If requests are insufficient to use the available OSG funds, because eligibility issues or other reasons, then the grant funds may be awarded to eligible projects on the CWSRF IUP's Fundable List;
3. Authorizes the Deputy Director of DFA to provide CWSRF principal forgiveness funding, on a non-equivalency basis, to meet the state match requirement for all applicants with an MHI less than 80% of the statewide MHI and/or applicants serving a population of 10,000 or less. Non-DAC applicants serving a population of more than 10,000 are required to provide a minimum of 20% local match that will count toward the state match obligation required under the OSG program;

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4. Authorizes the Deputy Director of DFA to provide planning grants for applicants serving communities with an MHI less than 80% of the statewide MHI and/or less than 10,000 population to complete environmental documents and/or other planning activities necessary to execute an agreement for OSG implementation funding.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 19, 2022.

Jeanine Townsend
Clerk to the Board